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Counsel for Plaintiffs
Richard E. Haskins, Arthur Haskins, and
Estate of Arthur "Buzz" Haskins, Deceased

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO/OAKLAND DIVISION

RICHARD E. HASKINS, as an individual
and as trustee of the San Bruno Channel
Remediation Trust; ARTHUR L. HASKINS,
as an individual; and ESTATE OF ARTHUR
"BUZZ" HASKINS, JR., a deceased
individual, by and through his successors in
interest, Richard E. Haskins and Arthur L.
Haskins,

Plaintiffs,

v.

EMPLOYERS INSURANCE OF WAUSAU,
a Wisconsin corporation; and NATIONWIDE
INDEMNITY COMPANY, an Ohio
corporation; *et al.*,

Defendants.

AND RELATED COUNTERCLAIM.

Case No. 3:14-cv-01671-JST

STIPULATION AND ~~(PROPOSED)~~ ORDER
GRANTING LEAVE TO PLAINTIFFS AND
DEFENDANTS TO FILE MULTIPLE
SUMMARY JUDGMENT MOTIONS

The parties have met and conferred following this Court's Order Granting Motion for Summary Judgment (ECF No. 58) regarding the duty to defend. The Court will recall that, in its Order, it held only that "Wausau owed a duty to defend [Plaintiffs] against Cherokee's counterclaims in the underlying action." ECF No. 58 at 6:10-11. Plaintiffs' motion did not present, and the Court did not decide, whether Wausau breached its duty to defend or whether



1 “Plaintiffs’ actions in rejecting a settlement that Wausau reached with Cherokee violated the
2 policy’s cooperation clause, resulting in Plaintiffs’ assumption of responsibility for their own
3 defense. . . .” *Id.* at fn. 2, 3:26-28; *see also id.*, at 6:11-14 (“The Court again notes that Plaintiffs
4 have not requested summary judgment on any other issue, including the questions of whether
5 Wausau breached that duty or whether Plaintiffs took action that resulted in the forfeiture of that
6 duty.”). The parties agree that the Court can and should decide those two issues—whether Defen-
7 dants breached the duty to defend and whether Plaintiffs took actions that resulted in the forfeit-
8 ture of that duty—now as a matter of law by way of cross motions for partial summary judgment.

9 The parties believe that those two issues are threshold questions upon which the other
10 remaining issues in this action depend, including, for instance, whether and, if so, to what extent,
11 Defendants are liable to Plaintiffs for breach of the duty to defend, and whether Defendants might
12 be liable on the stipulated judgment from the underlying action. Accordingly, rulings from the
13 Court on these two issues may focus and streamline the parties’ further discovery and motion
14 practice in this action, and may also jump start and facilitate their settlement discussions—at least
15 on some aspects of this action, if not the entire action.

16 The parties also believe that they will likely be ready to present these two issues to the
17 Court in their moving papers, and to prepare their oppositions to each other’s motions, with little,
18 if any, additional discovery, based largely on stipulated facts. On this point, the parties have
19 committed themselves to work together in good faith to try to stipulate to as many of the relevant
20 facts and to the authenticity and admissibility of as many of the relevant documents as possible.
21 That said, as the parties prepare their moving papers, or once they see each other’s moving
22 papers, they may decide that they need more time to investigate, gather evidence, conduct
23 discovery, etc. Accordingly, the parties hereby reserve their right under Rule 56 to ask the Court
24 for an extension of time for the parties to brief, or for the Court to hear or decide, their motions in
25 order to allow the parties additional time to investigate, gather evidence, conduct discovery, etc.,
26 and to present additional evidence to the Court in connection with such motions.

27 If the parties do file cross motions for partial summary judgment as contemplated herein,
28 they do not wish to be prevented from filing additional summary judgment or partial summary

1 judgment motions later, if appropriate, and after additional discovery as may be necessary.
 2 Accordingly, Plaintiffs hereby request leave of Court to file more than two (since they have
 3 already filed one) motions for summary judgment or partial summary judgment, and Defendants
 4 hereby request leave of Court to file more than more motion for summary judgment or partial
 5 summary judgment. *See* Standing Order For All Civil Cases Before District Judge Jon S. Tigar,
 6 at ¶ D (Each party is limited to one summary judgment motion and “[a]ny party wishing to
 7 exceed this limit must request leave of court and must show good cause.”).

8 In sum, the parties hereby request leave of Court to file cross-motions for partial summary
 9 judgment on (1) whether Defendants breached their duty to defend and (2) whether Plaintiffs took
 10 actions that resulted in the forfeiture of that duty. The parties propose the following briefing
 11 schedule: moving papers due April 24, 2015; opposition papers due May 22, 2015; and reply
 12 papers due June 5, 2015. The parties agree to meet and confer on a date and time for both motions
 13 to be heard together.

14 THE PARTIES SO STIPULATE.

15 DATED: March 10, 2015

PALADIN LAW GROUP® LLP

16 By: /s/
 17 BRIAN R. PAGET
 18 Counsel for Plaintiffs
 19 Richard E. Haskins,
 20 Arthur L. Haskins, and
 21 The Estate of Arthur “Buzz”
 22 Haskins, Jr., Deceased

23 DATED: March 9, 2015

BARBER LAW GROUP

24 By: /s/
 25 BRYAN BARBER
 26 Counsel for Defendants
 27 Employers Insurance of Wausau and
 28 Nationwide Indemnity Company

DATED: March 9, 2015

DENTONS US LLP

By: /s/
 SONIA MARTIN
 Counsel for Defendants
 Employers Insurance of Wausau and
 Nationwide Indemnity Company

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FILER'S ATTESTATION:

Pursuant to Local Rule 5-1(i)(3) regarding signatures, I attest under penalty of perjury that the concurrence in the filing of this document has been obtained from its signatories.

DATED: March 10, 2015 By: /s/

BRIAN R. PAGET

ORDER

Having considered the parties' request, and good cause appearing, the Court hereby GRANTS Plaintiffs' request to file more than two, and Defendants' request to file more than one, motion for summary judgment or partial summary judgment in this action.

Plaintiffs and Defendants may file cross motions for summary judgment or partial summary judgment by April 24, 2015. The parties' opposition papers are due by May 22, 2015. The parties' reply papers, if any, are due by June 5, 2015. The parties shall meet and confer to decide on a date and time for a hearing when both motions shall be heard together. These dates are without prejudice to the parties' rights under Rule 56 to ask the Court for an extension of time for the parties to brief, or for the Court to hear or decide, the motions in order to allow the parties additional time to investigate, gather evidence, conduct discovery, etc., and to present additional evidence to the Court in connection with such motions.

PURSUANT TO STIPULATION, IT IS SO ORDERED

Date: March 11, 2015

